

REMARKS

Status of the Application:

Claims 1 and 8-12 were pending in the application at the time the Office Action was mailed. Claims 1 and 8-12 were rejected. No claims were allowed.

By this amendment, no claims have been amended, added or canceled. Therefore, claims 1 and 8-12 are pending and before the Examiner for consideration.

Rejections Under 35 U.S.C. § 103:

Claim 1 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Atwell (US patent no. 6,561,784) in view of Wetzel's Pretzels (www.wetzels.com/experience.php), and further in view of KrispyKreme, Pretzel Time, Recipe Kitchen, Jindra et al. (US patent no. 6,528,104) and Rooney et al. (US patent no. 6,242,021). According to the Office Action:

The combination of contrasting flavors would have been well known to the ordinarily skilled artisan. Other examples would include a trail mix that includes pretzels with chocolate such as M&MTM candy and Chex[®] snack mix. Therefore to combine the pretzel dough of Atwell with another contrasting dough such as cinnamon bun dough would have been obvious since the art teaches that it has been conventional to combine these flavors for the purpose of providing a contrasting taste. It is noted that the prior art, such as Pretzel Time, Wetzel's Pretzels and Recipe Kitchen also teach this contrasting flavor by adding sweet ingredients such as cinnamon and sugar to a pretzel.

Applicant submits that the cited combination of references teaching "contrasting flavors" does not render the present invention obvious within the meaning of 35 USC 103 because the combination of references fails to teach all claim limitations and the references fail to suggest modifying their teachings to arrive at Applicant's invention. Although the prior art references teach pretzels, cinnamon buns, doughnuts, and pretzels sprinkled with sugar, the combination of references fails to disclose or suggest "a first elongated dough member having a

pretzel dough composition and formed to have a plurality of open spaces within said first elongated dough member, and said first elongated dough member having a first end and a second end; a second elongated dough member having a cinnamon bun dough composition and formed into a spiral configuration and positioned within a first of said plurality of open spaces of said first elongated dough member" as recited in claim 1.

In all of the pending claims, the first elongated dough member having a pretzel dough composition is formed to have a plurality of open spaces, and at least one of these spaces has positioned therein a dough member having a cinnamon bun dough composition. Thus, a single food product of the present invention contains *both* a sweet cinnamon bun dough and a savory pretzel dough. Stated another way, a single food product of the present invention provides both a pretzel, and at least one cinnamon bun – *in the same product*. In contrast to the prior art which teaches the *flavor* of a pretzel combined with the *flavor* of cinnamon and sugar, the claimed invention is directed to a single food product that includes an actual pretzel and at least one actual cinnamon bun.

To first address Atwell, Applicant respectfully disagrees with several of the Office Action's assertions regarding this reference. First, the statement on page 3 of "[r]egarding instant claim 1, Atwell teaches two or more dough compositions (Column 4, Lines 18-22) and further teaches wherein a different dough is used to fill the hole formed when the first dough composition is shaped (Column 4, lines 44-52)" is incorrect, because Atwell does not teach or even suggest filling the holes of doughnuts. Instead, Atwell teaches making a doughnut (having a hole in the center) that is partitioned into two or more different flavors or types of doughnut dough. There is no mention in Atwell of filling the doughnut holes. The Office Action points to

column 4, lines 44-52 of Atwell for support of the assertion that Atwell teaches filling a doughnut hole with a dough different than that of the doughnut, but this paragraph does not teach or suggest filling a doughnut hole. Instead, this paragraph describes partitioning the doughnut dough such that the doughnut has a central section of one dough type (i.e. *around* the doughnut hole (not *in* the doughnut hole)), and a surrounding peripheral section of a second dough type.

Regarding the examiner's statement that "Atwell teaches using cake and bread dough compositions, such as pretzels (Column 1, line 13 and lines 17-20)," it is true that Atwell makes brief and singular mention of a pretzel in the second line of the Background section, however, nowhere in Atwell is there any mention of using the claimed device to combine pretzel dough with any other kind of dough. In fact, Atwell merely describes combining different types of *doughnut* dough, rendering the statement on page 4 of the Office Action that "Atwell teaches that one of the dough compositions can be that of a pretzel..." incorrect. Lastly, the statement "Atwell already teaches placing the second dough member within an open space within the first dough..." is incorrect, because Atwell does not teach filling in the doughnut hole, but instead describes a device which partitions a single doughnut such that the doughnut has two or more different types (e.g., flavors) of *doughnut* dough. Thus, nowhere in Atwell is there any mention of placing a second dough member within an open space within a first dough member.

Regarding Berry (Applicant notes this reference is not listed amongst the list of references used to reject the claims but are addressing it herein because it was mentioned on page 4 of the Office Action), Wetzel's Pretzels, Pretzel Time, Recipe Kitchen and Krispy Kreme, the examiner relies on these references to teach the conventionality of the combination of a cinnamon bun flavor with that of a secondary product. Berry teaches sprinkling cinnamon and

sugar on dough. Pretzel Time discloses a pretzel that is sprinkled with cinnamon and sugar. Wetzel's Pretzels teaches a cinnamon roll that is in the shape of a pretzel (the "Cin-A-Yum"), i.e., the **composition** of a sweet dough product and the **configuration** of a pretzel. A pretzel-shaped product made entirely of sweet dough does not suggest or render obvious a single food product having a savory pretzel and at least one sweet cinnamon bun. These teachings by Wetzel's Pretzels are not at all pertinent to the claimed invention, because the claims make no mention of a sweet cinnamon dough product in a shape other than that of a cinnamon bun. Wetzel's Pretzels does not teach a single food product having both a savory pretzel dough composition and at least one sweet cinnamon dough composition. Thus, there is nothing in this reference that suggests a single food product that provides at least one sweet cinnamon bun and a savory pretzel to the consumer. Krispy Kreme teaches a doughnut having a filled hole and a glaze topping resulting in a doughnut that mimics the appearance of a cinnamon bun. There is no savory component to this product; it is strictly sweet dough. In stark contrast, the present invention provides a single food product that includes a savory pretzel and a sweet cinnamon bun.

Regarding Jindra et al., the Office Action states "Jindra et al. is cited as evidence of the conventionality of combining a sweet flavor such as apple cinnamon with a pretzel...[t]hus the prior art teaches that it has been conventional to combine the flavor of a cinnamon but with that of another product, such as a pretzel." Jindra et al. discloses a pretzel stuffed with an apple-cinnamon filling and makes no mention of a cinnamon bun. Rooney et al., which discloses a pretzel stick surrounded by cereal pieces, is relied upon in the Office Action as "further motivation for combining a pretzel flavored composition with a contrasting food substance..."

This reference also fails to mention a cinnamon bun. None of the cited references mention a product including both a cinnamon bun and a pretzel.

The Office Action states on page 5 that "[t]hus, the prior art teaches that it has been conventional to combine the flavor of a cinnamon but with that of another product, such as a pretzel" and further states that "it would have been obvious to one having ordinary skill in the art to use cinnamon flavored dough with the product of Atwell to achieve the result of the combined **flavor** of a pretzel with that of a cinnamon roll." Applicant submits that the claimed composition does not recite the combination of the **flavor** of a pretzel with that of a cinnamon roll, as the Office Action has mischaracterized the claimed invention. The claimed invention is a food product that includes both a pretzel dough composition and a cinnamon dough composition. Showing that cinnamon buns, pretzels, cinnamon rolls in the shape of a pretzel (Wetzel's Pretzels), pretzels sprinkled with sugar and cinnamon (Pretzel Time) and the combination of sweet and savory ingredients (Berry) existed prior to the filing of the present application does not render the claimed invention obvious. In the cited references that describe a pretzel and a cinnamon (not cinnamon bun) combination, there is no language whatsoever about the inferiority of the pretzel and cinnamon combination, or the need or demand for a pretzel and cinnamon combination that exceeds or improves what was commercially available.

In view of the foregoing, each of the pending claims is patentable over the combination of Atwell, Wetzel's Pretzels, KrispyKreme, Pretzel Time, Recipe Kitchen, Jindra et al. and Rooney et al. Accordingly, withdrawal of these rejections is respectfully requested.

Claims 8-12 were rejected under 35 USC 103(a) as being unpatentable over Atwell, Wetzel's Pretzels, KrispyKreme, Pretzel Time, Recipe Kitchen and Rooney et al. and in further view of Tepper et al. (US application no. 2004/0126462). According to the Office Action:

Regarding instant claims 8-12, the claims add third and fourth elongated dough members within a second and third open space of the first elongated dough member. Since the combination of the prior art teaches placing a second dough composition within an open space of the first dough composition, to duplicate the arrangement and place a third and fourth dough member having a spiral configuration into the remaining open spaces of the first dough member would not have provided a patentable feature over the prior art, since the art has already taught it conventional to place a second dough member having a different composition than that of the first dough member within an open space of the first dough member.

Tepper et al. is also relied on as further evidence of the conventionality of placing a multiple of spiral shaped food products within a plurality of open spaces within a first food product. Tepper et al. is also relied on to teach that the spiral shaped food products placed within the open space of the first food product can take different arrangements, as shown by figures 1, 4, 7, 9 and 12.

Applicant submits that the cited combination of references does not render the present invention obvious within the meaning of 35 USC 103 because the combination of references fails to teach all claim limitations and the references fail to suggest modifying their teachings to arrive at Applicant's invention. Although the prior art references teach pretzels, pretzels sprinkled with cinnamon and sugar, doughnuts, cinnamon rolls in the shape of a pretzel, and dog bones, the combination of references fails to disclose or suggest "a first elongated dough member having a pretzel dough composition and formed to have a plurality of open spaces within said first elongated dough member, and said first elongated dough member having a first end and a second end; a second elongated dough member having a cinnamon bun dough composition and formed

into a spiral configuration and positioned within a first of said plurality of open spaces of said first elongated dough member" as recited in claim 1.

The Office Action relies on the combination of Atwell, Wetzel's Pretzels, KrispyKreme, Pretzel Time, Recipe Kitchen, Rooney et al. and Tepper et al. to teach "the conventionality of placing a multiple of spiral shaped food products within a plurality of open spaces within a first food product" on page 7. In all of the pending claims, the first elongated dough member having a pretzel dough composition is formed to have a plurality of open spaces, and at least one of these spaces has positioned therein a dough member having a cinnamon bun dough composition. Thus, a single food product of the present invention contains *both* a sweet cinnamon bun dough and a savory pretzel dough. Stated another way, a single food product of the present invention provides both a pretzel, and at least one cinnamon bun – *in the same product*.

Atwell, Wetzel's Pretzels, KrispyKreme, Pretzel Time, Recipe Kitchen, Rooney et al. have been described above. Tepper et al. is directed to dog bones and is relied upon to teach that "the spiral shaped food products placed within the open space of the first food product can take different arrangements, as shown by figures 1, 4, 7, 9 and 12." Being directed to dog bones, Tepper et al. of course does not mention pretzels or cinnamon buns. Even if one of skill in the baking arts would have the Tepper et al. dog bone patent in front of them in combination with the remaining references, one would not be motivated to develop a single food product providing both a pretzel and at least one cinnamon bun.

In view of the foregoing, each of the pending claims is patentable over the combination of Atwell, Wetzel's Pretzels, KrispyKreme, Pretzel Time, Recipe Kitchen, Rooney et al. and Tepper et al. Accordingly, withdrawal of these rejections is respectfully requested.

In re Application of: Schreider
Confirmation No: 4579
Application No.: 10/623,489
Examiner: THAKUR, V.A.
Page 9 of 9

Double Patenting

Claims 1, 8 and 9 were provisionally rejected under 35 USC 101 as claiming the same invention as that of claims 1, 8 and 9 of copending application no. 10/642,541. The claims of copending application no. 10/642,541 will be amended or canceled in the response to be filed to the outstanding office action in application no. 10/642,541. Accordingly, withdrawal of this rejection is respectfully requested.

Conclusion

It is believed that all claims are now in condition for immediate allowance. However, the Examiner is invited to call the undersigned (direct line: 561-671-3623) if it is believed that a telephonic interview would expedite the prosecution of the application to allowance. This Response is being filed with a request for a retroactive extension of time. The Commissioner for patents is hereby authorized to charge the fee for the retroactive extension of time as well as any underpayment or credit any overpayment of fees to Deposit Account No. 50-0951.

Date:

4/18/02

Respectfully submitted,
AKERMAN SENTERFITT



J. Rodman Steele, Jr., Esq.

Reg. No. 25,931

Amy A. Dobbelaere, Ph.D.

Reg. No. 52,088

AKERMAN SENTERFITT

P.O. Box 3188

West Palm Beach, FL 33402-3188

Tel: 561-653-5000

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